Filed 7/29/20 P. v. The North River Ins. Co. CA2/8

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. THE NORTH RIVER INSURANCE COMPANY, Defendant and Appellant. BAD BOYS BAIL BONDS, Real Party in Interest and Appellant.	B295266 (Los Angeles County Super. Ct. No. OSJ2169

APPEAL from an order of the Superior Court of Los Angeles County, Victoria B. Wilson, Judge. Affirmed.

Jefferson T. Stamp for Defendant and Appellant The North River Insurance Company and Real Party in Interest and Appellant Bad Boys Bail Bonds.

Mary C. Wickham, County Counsel, and Adrian G. Gragas, Assistant County Counsel, for Plaintiff and Respondent.

In this bail forfeiture case, North River Insurance Company and real party in interest Bad Boys Bail Bonds appeal an order denying their motion to set aside summary judgment, vacate forfeiture, and exonerate bail. Appellants contend the motion should have been granted because 1) the trial court set bail without considering their client's ability to pay or whether there were less restrictive alternatives to bail; 2) the judgment is void because it was not entered by the same judge who forfeited the bail in the first instance; and 3) the judgment is void because it was entered in the downtown courthouse instead of in the district courthouse where the bond was originally forfeited and the underlying criminal proceedings were commenced. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On August 1, 2017, Igor Calhenco Da Rocha appeared in the Airport Courthouse in Los Angeles County for arraignment on charges of burglary, receiving stolen property, and forgery of an access card. Da Rocha appeared under the name Mario Dos Santos Moreira. Judge Keith L. Schwartz presided. He asked the People to summarize the alleged events in support of the charges. The prosecutor advised the court that Da Rocha was accused of going to Cartier's where he tried to buy a $29,000 watch with false credit card information. Police arrived and took him into custody. In Da Rocha's wallet, police found two other credit cards which appeared "bogus." Officers also recovered from Da Rocha two Cartier bracelets whose serial numbers had been flagged because they had been purchased with fraudulent credit cards in Costa Mesa and Florida.

In addition to taking Da Rocha's not guilty plea, Judge Schwartz set bail. The People asked for bail to be set according to the bail schedule, that is, $40,000. Da Rocha through his

counsel asked for a bail reduction because he had no prior criminal history and was charged with committing non-violent offenses.

In denying Da Rocha's request, the court stated: "Well, we don't even know who this guy is. He is a national from Brazil. He lives in Florida according to the D.A. or has an address in Florida. He's got three different credit cards, different I.D. on each of the credit cards. He's got a Brazilian identification card of some kind that is a different name than what counsel said was in the report. Or I don't even know what his true name is." The trial court denied release on defendant's own recognizance and set bail at $40,000.

Four days later, on August 5, 2017, Da Rocha posted bail and was released from custody. His next court appearance was scheduled for August 8, 2017. He failed to appear as ordered at 8:30 a.m. At 11:52 a.m., Judge Schwartz sua sponte ordered the bond forfeited and the matter continued to the afternoon calendar. Da Rocha showed up over the noon hour, spoke to his attorney, and then failed to appear when court resumed at 1:30 p.m. At 2:15 p.m., Judge Schwartz stated the bond remained forfeited. The court issued a bench warrant and set bail on the warrant at $250,000. Defense counsel offered no explanation as to why his client failed to appear at 1:30 p.m. and the prosecutor said nothing.

On September 4, 2018, Judge Maame Frimpong entered summary judgment against appellant based on Judge Schwartz's forfeiture order. Judge Frimpong was sitting at the Central Justice Center, not the Airport Courthouse.

On November 2, 2018, appellants filed a motion to set aside summary judgment, vacate forfeiture, and exonerate the bond. On December 21, 2018, Judge Victoria B. Wilson heard and denied the motion.

This timely appeal followed.

DISCUSSION

The trial court's denial of a motion to set aside an order of forfeiture is reviewed for abuse of discretion. When the facts are undisputed and only legal issues are involved, we conduct an independent review. (*People v. International Fidelity Ins. Co.* (2012) 204 Cal.App.4th 588, 592.)

Forfeiture of bail is governed by Penal Code sections 1305 and 1306.[1] As a general rule, failure of a defendant to appear without sufficient excuse requires entry of such fact upon the minutes of the court, and an immediate forfeiture of the bail with prompt notice to the surety and its agent. (§ 1305, subd. (a).) After the bail bond is declared forfeited by the trial court, the bail agent is provided 180 days (plus 5 additional days when the notice is served by mail) to produce the defendant and reinstate or exonerate the forfeited bond. (*Id.*, subd. (b).) This is the "appearance period." The court may extend the appearance period for up to an additional 180 days from its initial forfeiture order. (§ 1305.4; *People v. Financial Casualty & Surety, Inc.* (2016) 2 Cal.5th 35, 43.) If the defendant is brought to court during the appearance period, the forfeiture must be vacated and the bond exonerated. (§1305, subd. (c)(1); *People v. Tingcungco* (2015) 237 Cal.App.4th 249, 253.)

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

If the appearance period closes without defendant's appearance or a set aside of the forfeiture, section 1306, subdivision (a) compels the trial court to enter summary judgment against the bail agent. The bail bond itself expressly sets out the agent's consent that "judgment may be summarily made and entered forthwith . . . for the amount of its undertaking herein as provided by Sections 1305 and 1306 of the Penal Code." Entry of summary judgment in a bail forfeiture is a consent judgment entered without a hearing and the proceedings are not adversarial. Because the surety consents to judgment pursuant to the governing statutes, the "only issue in a challenge to the summary judgment is whether it was entered pursuant to the terms of the consent, which requires compliance with Penal Code sections 1305 and 1306." (*People v. American Contractors Indemnity Co.* (2015) 238 Cal.App.4th 1041, 1047.*)*

A. *In Re Humphrey* (2018) 19 Cal.App.5th 1006 Does Not Render the Bail Bond Unenforceable.

Appellants contend the bond is void because the trial court violated Da Rocha's due process rights when it set the bond at $40,000 without considering Da Rocha's ability to pay or whether there were less restrictive alternatives to a bond of that amount. They base their argument on *In re Humphrey* (2018) 19 Cal.App.5th 1006, review granted May 23, 2018, S247278 (*Humphrey*). In *Humphrey*, the First Appellate District held "the due process and equal protection clauses of the Fourteenth Amendment require the court to make two additional inquiries and findings before ordering release conditioned on the posting of money bail—whether the defendant has the financial ability to pay the amount of bail ordered and, if not, whether less

restrictive conditions of bail are adequate to serve the government's interests." (*Id.* at p. 1025.)

We reject appellants' contention that *Humphrey* applies to forfeiture of bail. First, our Supreme Court has granted review in *Humphrey* so it now has no "binding or precedential effect, and may be cited for potentially persuasive value only" pending review and filing of the California Supreme Court's opinion. (Cal. Rules of Court, rule 8.1115(e)(1).) Thus, contrary to appellant's argument, we are not compelled to follow *Humphrey*.

Second, no court has held that if a court fails to make the additional findings required by *Humphrey,* the bail bond is void, relieving the surety of the obligation to pay. We decline to so hold here. Instead, we agree with the Third Appellate District's recent decision in *People v. Accredited Surety & Casualty Co.* (2019) 34 Cal.App.5th 891, review denied August 14, 2019, S256245 that notwithstanding the requirements of *Humphrey*, it is well settled " '[d]efects and irregularities, if any, in the proceedings preliminary to the taking of bail are considered as waived by the surety when it assumes its obligations as such at the time of the execution of the bond.' [Citations.]" (*Id.* at p. 898; see also *People v. North River Ins. Co* (2020) 48 Cal.App.5th 226, 235–237.) In adopting the Third Appellate District's holding we reject appellants' new iteration of the argument they made in the trial court, that is, the *Humphrey* defects rendered Da Rocha's detention illegal and the illegality of his detention prevented the bail bond agent from taking lawful custody of him, rendering the bail bond unenforceable.

Third, assuming *Humphrey* does apply, we find the trial court implicitly found there were no available less restrictive alternatives. In setting the amount at $40,000, the court found Da Rocha's true identity had not been established; Da Rocha appeared to be a foreign national with an address in Florida; Da Rocha was found with credit and identification cards in different names; and Da Rocha had in his possession bracelets fraudulently purchased from two different locations in Costa Mesa and Florida. After stating these facts, which Da Rocha did not contradict, the court expressly denied release without bond and set the bail at $40,000. We find the trial court's recitation of these facts generally associated with a risk of flight (out of state residence, multiple identities, fraudulent identification, cross-country travel, foreign citizenship) indicates the trial court concluded there were no less restrictive alternatives to the bail it set.

Finally, Da Rocha's liberty was not unconstitutionally restrained because he posted bail and is now free from custody. Because the defendant was able to pay, *Humphrey* is not implicated. "[W]e may reasonably infer his ability to post bail from the fact that he did." (*People v. North River Ins. Co., supra*, 48 Cal.App.5th at p. 237.) That it took four days to post the bond is immaterial under *Humphrey* which held that the remedy for failure to conduct an ability-to-pay hearing is a new bail hearing, not immediate release. (*Id.* at p. 238.)

B. There Is No Requirement That Only the Judge Who Heard the Evidence May Enter Judgment Pursuant to Section 1306, Subdivision (a).

Appellants next argue that only Judge Schwartz, the judge who ordered the bond forfeited, had the authority to enter

judgment against them under section 1306, subdivision (a). Relying on *European Beverage, Inc. v. Superior Court* (1996) 43 Cal.App.4th 1211 (*European Beverage*), appellants argue that the judge who "heard the evidence" must also be the judge who enters judgment.

European Beverage involved a bifurcated bench trial where the judge who made initial factual findings on the equitable issues became unavailable to hear the remaining legal issues. The successor judge would have had to rely on factual findings made by the initial judge to complete the trial. The court of appeal held the parties were entitled to have the same trier of fact make the final decision because an interlocutory ruling can be changed up until entry of the final order. (*European Beverage*, *supra*, 43 Cal.App.4th at p. 1214.) Thus, when the judge who heard the evidence becomes unavailable to decide the remaining issues, a successor judge is obliged to hear the evidence and make his or her own decision on all issues, including those that had been tried before the first judge, unless the parties stipulate otherwise. (*Ibid*.)

We find *European Beverages* inapplicable to the highly regulated procedure for forfeiture of bail. Under the code, a surety has up to one year to produce the defendant and get the bond exonerated. This is a lengthy process designed to protect the surety and ensure it has sufficient time to locate the absent defendant and make its arguments against final entry of judgment on the forfeiture. Under the code, the surety is invited to come to court at any time during the appearance period and essentially write on a blank slate with new and additional evidence. The initial order of forfeiture does not preclude new findings or a new and different order nor does it erect evidentiary

or presumptive barriers to exoneration or reinstatement of bond; indeed the statutes governing forfeiture are designed to give the surety more "chances." Given this protective scheme, we see no need to mandate that the same judge preside over every aspect of the forfeiture procedure.

Moreover, given the length of time granted to the surety to make its case against forfeiture, it is highly impractical to graft onto the statute a requirement that only a single judge may preside over all stages of the proceedings. And "grafting" is exactly what we would be doing. The language of section 1306 does not support appellant's argument. Subdivision (a) states "the *court* which has declared the forfeiture shall enter a summary judgment . . . ." (§ 1306, subd. (a), italics added.) The California Constitution clearly states that the superior court of each county is a single entity made up of "one or more judges." (Cal. Const., art. VI, § 4.) We read the language of section 1306 to require that if a bond is forfeited by the Los Angeles County Superior Court, summary judgment will be entered by the Los Angeles County Superior Court.

Moreover, when the legislature has intended that an action be taken by the same judge, it has clearly said so. (See § 1170.18, subd. (l) ["If the court that originally sentenced the petitioner is not available, the presiding judge shall designate another judge . . . ."].) Given how carefully sections 1305 and 1306 delineate all aspects of the bail forfeiture process, we believe that if the legislature wanted the same judge who declared the forfeiture to enter the summary judgment as well, it could have said so. It did not. We therefore conclude the language of the statute does not require that each step of the forfeiture process be completed by the same judge.

C. **Venue Was Not Improper.**

Similarly, appellants argue, without citation to specific authority, that the judgment entered here is void because it was entered by a judge sitting in downtown Los Angeles, as opposed to a judge sitting in the Airport Court where the criminal proceedings were initiated and where the bail forfeiture occurred. No statute or case law adopts this position and we decline to do so now.

DISPOSITION

The order is affirmed. Respondent is awarded costs.

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STRATTON, J.

We concur:

BIGELOW, P. J.

WILEY, J.